

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. L 2007020611

HECTOR H.,
 Claimant,

vs.

EASTERN LOS ANGELES
REGIONAL CENTER,
 Service Agency.

DECISION

This matter came on regularly for hearing before David B. Rosenman, Administrative Law Judge of the Office of Administrative Hearings, on March 21, 2007, in Alhambra, California.

Claimant Hector H. was represented by his mother, America V.¹ and by Rex Sheridan, an authorized representative.

Carmen Vasquez, Early Start Manager for the Eastern Los Angeles Regional Center (Service Agency or ELARC), appeared on behalf of the Service Agency.

Evidence was received, the record was closed on March 21, 2007, and the matter was submitted.

ISSUES

The parties agreed to the following statement of the issue:

Should the Service Agency continue to fund coordinated life services (also known as wraparound services) by R.A. Cadia, Inc. for Claimant?

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. Claimant receives services from the Service Agency due to his eligible diagnosis of seizure disorder.

¹ Initials are used to maintain confidentiality.

2. In a letter and a Notice of Proposed Action dated January 25, 2007, the Service Agency notified Claimant's mother that, as of that date, it would stop funding for coordinated life services by R.A. Cadia, Inc. (R.A. Cadia) for Claimant. (Exhibit 1.)

3. Claimant's mother filed a Request for Fair Hearing dated January 31, 2007, and this hearing followed.

4. Claimant has mental health and medical diagnoses of poor hearing (he wears a hearing aid), paranoid schizophrenia, bipolar disorder, attention deficit/hyperactivity disorder and encopresis. Claimant also receives services from the Los Angeles County Department of Mental Health (DMH) and special education services from his school district, the Los Angeles Unified School District (LAUSD). LAUSD has noted the following significant factors: (1) a history of behavioral and emotional problems, including inattention, distractibility, hyperactivity, impulsivity, oppositional behavior, and aggressiveness toward peers since at least the third grade; (2) cognitive skills and reasoning abilities in the below average range according to the Cognitive Assessment System administered in September 2005, with much scatter across the different domains measured by this test, including significantly below average skills in Planning (Standard Score was 55), Attention (Standard Score was 57), and Successive Processing (Standard Score was 61), but low average skills in Simultaneous Processing (Standard Score was 83); (3) significant deficits in attention and auditory processing; (4) initial eligibility for special education services on December 4, 1998; (5) past special day class placement; and (6) nonpublic school placement at Leeway School since September 9, 2002. Academic testing conducted with the Wide Range Achievement Test--3 and reported in his September 27, 2005 Individualized Education Plan (IEP) revealed significantly below average skills in reading recognition, spelling, and arithmetic skills (grade level norms were 1, 2 and 3, respectively).

5. Claimant exhibits aggression towards others and has attempted suicide. He also has a history of substance abuse. Claimant has been subject to numerous involuntary psychiatric hospitalizations under the criteria of Welfare and Institutions Code section 5150 (a danger to himself and/or others). More specifically, he has been hospitalized at: Augustus Hawkins Mental Health Center (Augustus Hawkins MHC) from March 20 to April 17, 2003, due to aggression; College Hospital from March 22 to 24, 2004, for aggression and to stabilize medications; College Hospital from August 29 to September 3, 2005, for aggression and behavior that was risky and out-of-control; and at General Hospital and Augustus Hawkins MHC from December 21, 2005, to February 7, 2006, for aggression towards his brother and sister.

6. On December 21, 2005, Claimant was taken into custody by the local police after an altercation with his sister and her boyfriend, and was held at the General Hospital in the psychiatric ward over the holiday period. The treating physician was of the opinion that Claimant should not return home and should be placed in a residential treatment facility to ensure the safety of his family. In an effort to support Claimant and his family while residential services were located, ELARC recommended that it provide funding for coordinated life services based on the "wraparound service" model as well as a 24-hour

behavioral aide to provide in-home supervision should Claimant have to return home while placement was sought. The Department of Public Social Services, Children's Services (DPSS), became involved during this time and was also of the opinion that Claimant should be placed in an appropriate facility and not at home due to aggression towards other children in the home.

7. Based on a request by LAUSD, the DMH began in mid-January 2006 to work collaboratively with DPSS and ELARC on finding a placement consistent with the provisions of AB 3632.² Claimant was in Augustus Hawkins MHC at that time; however his mother was requesting that he return home with the family.

8. ELARC initiated and funded coordinated life services because of the myriad of agencies and issues at the time and the need to have more intensive case management services to provide additional support and oversight on the case. On February 1, 2006, ELARC authorized R.A. Cadia to provide coordinated life services for 52 hours per month. On February 7, 2006, Claimant was discharged to the home of his mother while efforts continued to place him in a residential program. On March 1, 2006, ELARC authorized an increase in service hours by R.A. Cadia to 100 per month. Also in March 2006, ELARC authorized an in-home behavioral aide, beginning at 24 hours per day, later decreased to 8 hours per day, and judicial intervention services.

9. Out-of-home placement had been discussed with Claimant's mother but, due to Claimant's cognitive functioning level and severe mental health issues, no immediate resources were available with residential programs vendored by the Service Agency. It was believed that Claimant would be most appropriately placed in a residential facility able to provide intensive mental health and educational services to adolescents. DMH was the lead agency to initiate a referral to an appropriate educational and residential treatment program. Numerous planning and team meetings occurred with all agencies and Claimant's family during the months of March and April. On May 5, 2006, Claimant was placed in an educational residential center, Hathaway/The Sycamores, by the DMH and his local school district. R.A. Cadia's hours were decreased to 52 hours per month effective June 1, 2006.

10. ELARC was able to eliminate supports from the behavioral aide and judicial services as Claimant's school/residential placement provided those services. R.A. Cadia's services were scheduled to end on December 31, 2006. ELARC performed a service review on December 12, 2006, and determined that R.A. Cadia had achieved the stated goals of the IPP and that DMH had become the responsible agency to provide wraparound services. Services continued, however, until the Service Agency sent the Notice of Proposed Action to terminate the services, and have continued since as aid paid pending the resolution of the Request for Fair Hearing.

² This reference is to Assembly Bill 3632, enacted by the California Legislature in 1984, known as the Special Education Pupils Program and found in Government Code section 7570 *et seq.* and California Code of Regulations, title 2, section 60000 *et seq.*

11. Referral was made to DMH on or around January 26, 2007, requesting wraparound services for Claimant. The service was approved and Claimant's mother gave consent to begin DMH funded wraparound services on March 8, 2007. The wraparound services offered by DMH are funded by the Department of Social Services and implemented by DMH. The service provider for Claimant is St. Anne's. The wraparound services to be provided are described in a summary fashion in Exhibit 3 and in the User's Guide, Exhibit 6.

12. Claimant's mother has found the services by R.A. Cadia to be extremely helpful, for Claimant and the entire family. In her Request for Fair Hearing (Exhibit A), she listed the following services provided:

“Family Supports

- “1. Information and location of therapy for [Claimant] and my other children
- “2. Employment Assistance for my adult daughter
- “3. Assistance with immigration status
- “4. Child support assistance, filing for support
- “5. Research for alternative housing
- “6. Connected me to Bienvenidos and Boys and Girls Club”

“[Claimant's] Direct Supports

- “1. Located a center for volunteer work and Horse Riding lessons
- “2. Advocate for education support
- “3. Searching for substance abuse programs”

“Supported and Attended Team meeting

- “1. ISSP
- “2. JEP
- “3. Circle meetings
- “4. Quarterly Meeting”

“Medical

- “1. Located Neurologist and provided transportation
- “2. Located low income medical resource for me”

“Transportation

- “1. Facilitated transportation for doctor's appointments, team meetings, community resources”

“Many of these services require follow up including maintaining communication with Hathaway's Sycamores, providing parenting education and advocacy support, and following up on services that have already been put in place. I am very concerned and fearful that if [Claimant] does not leave his current placement at the time that we planned (April or May) that he will start acting out and we will lose much of the progress that has been made. . . . I understand that R.A. Cadia cannot provide services for me permanently and that the transfer

needs to take place to DMH. However, I am requesting that R.A. Cadia continue to provide services until they are replaced fully by DMH.”

13. Claimant’s request was supported by testimony and a letter from Rex Sheridan, a Marriage and Family Therapist intern at Hathaway/The Sycamores who has worked extensively with Claimant, his family and R.A. Cadia. Mr. Sheridan noted that Claimant is currently scheduled to undergo an IEP with LAUSD to find an educational placement and, thereafter, is expected to be discharged to return home, with a target date of April 1, 2007. However, any delay in an educational placement may push back Claimant’s release. Mr. Sheridan finds this to be a period of great transition for Claimant, including such major events as returning home after more than 10 months in residential treatment and returning to school at LAUSD. In Mr. Sheridan’s opinion, adding another transition—moving wraparound services from R.A. Cadia to St. Anne’s—could jeopardize the success of Claimant and his family in adapting to the new situations. Based on the time the R.A. Cadia has provided services, and the success of those services, there has developed a trust and confidence that would be missed if the services were to end. Although Mr. Sheridan would like the R.A. Cadia services to continue longer, he has been told by personnel at R.A. Cadia that they would like to continue services for one to two months after Claimant’s discharge from Hathaway/The Sycamores.

14. The Service Agency contends that the primary responsibility for wraparound services is with DMH, and that it cannot by law provide services that are required to be provided by another agency.

APPLICABLE LAW, LEGAL CONCLUSIONS AND DISCUSSION

1. Throughout the applicable statutes and regulations (Welfare & Institution Code³ section 4700 *et seq.* and California Code of regulations, title 17, section 50900 *et seq.*), the state level fair hearing is referred to as an appeal of the Service Agency’s decision. In this matter, where the Service Agency proposes to eliminate a service, the burden is on the Service Agency to demonstrate that its decision is correct. The burden of proof is by a preponderance of the evidence. (Evid. Code, §§ 115 and 500.)

2. Various portions of the applicable law apply to Claimant’s request. For example, section 4648 requires the Service Agency to secure services to carry out the legislative intent for clients to achieve the greatest self sufficiency possible, and to meet the needs of the consumer as identified in the consumer’s individual program plan. The Service Agency is directed to pay for services at a rate that ensures that the provider can meet the consumer’s special needs and “provide quality services and supports in the least restrictive setting.”

³ These code sections are also known as the Lanterman Act. Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The statutory scheme also includes the direction to the Service Agency to accomplish its goals in a cost-effective manner. (See, for example, sections 4646, 4648, subdivision (a)(11), 4669.2, subdivision (b) and 4685.) Section 4690 requires the Department of Developmental Services to establish an equitable process to set rates for payment for such services in a manner that assures their high quality.

3. Services provided must be cost-effective (section 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., sections 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) A fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

4. The emphasis that the Lanterman Act places on cost-effectiveness can also be found in other sections more directly related to Claimant's wraparound services. In the coordination of services for Claimant, section 4647, subdivision (a), requires the planning team to consider "all appropriate options" for meeting objectives, including obtaining services "from generic agencies or other resources." Under section 4648, subdivision (8), the Service Agency is specifically prohibited from supplying services that are being supplied by "any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

5. As noted in Factual Finding 11, Claimant has been accepted for wraparound services as provided by DMH, and the process of identifying and providing those services has begun by St. Anne's. This creates a situation whereby the Service Agency is prohibited by law from extending services that duplicate those provided by DMH.

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6. The broad requirements of the Lanterman Act to provide needed supports and services can justify continuation of the R.A. Cadia services for only as long as needed for the DMH provider to become familiar with the situation and needs of Claimant and his family. R.A. Cadia has indicated that it would like one or two months from the time that Claimant is released from Hathaways/The Sycamores. However, there is no certainty of when Claimant's release will occur, although it may be as soon as April 1, 2007. Therefore, to allow for an orderly transition, the Service Agency shall fund wraparound services for Claimant by R.A. Cadia for a period of no more than 45 days from the date of this Decision.

ORDER

WHEREFORE, IT IS HEREBY ordered that:

The Service Agency shall fund wraparound services for Claimant by R.A. Cadia for a period of no more than 45 days from the date of this Decision.

DATED: March 28, 2007.

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

Notice: This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.